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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XF084

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Rocky Intertidal Monitoring Surveys along the Oregon and California Coasts

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; Issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to the Partnership for Interdisciplinary Study of Coastal Oceans (PISCO) at the University of California Santa Cruz (UCSC) to incidentally harass, by Level B harassment only, marine mammals during rocky intertidal monitoring surveys.

DATES: This Authorization is effective from February 21, 2017 through February 20, 2018.

FOR FURTHER INFORMATION CONTACT: Robert Pauline, Office of Protected Resources, NMFS, (301) 427-8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq*.) direct the

Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking, other means of effecting the least practicable impact on the species or stock and its habitat, and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as: "any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment)."

Summary of Request

On September 23, 2016 NMFS received an application from PISCO for the taking of marine mammals incidental to rocky intertidal monitoring surveys along the Oregon

and California coasts. NMFS determined that the application was adequate and complete on October 9, 2016. NMFS has previously issued four IHAs for this ongoing project (77 FR 72327, December 5, 2012; 78 FR 79403, December 30, 2013; 79 FR 73048, December 9, 2014; 81 FR 7319, February 2, 2016).

The research group at UC Santa Cruz operates in collaboration with two large-scale marine research programs: PISCO and the Multi-agency Rocky Intertidal Network (MARINe). The research group at UC Santa Cruz (PISCO) is responsible for many of the ongoing rocky intertidal monitoring programs along the Pacific coast. Monitoring occurs at rocky intertidal sites, often large bedrock benches, from the high intertidal to the water's edge. Long-term monitoring projects include Community Structure Monitoring, Intertidal Biodiversity Surveys, Marine Protected Area Baseline Monitoring, Intertidal Recruitment Monitoring, and Ocean Acidification. Research is conducted throughout the year along the California and Oregon coasts and will continue indefinitely. Most sites are sampled one to two times per year over a 4-6 hour period during a negative low tide series. This IHA is effective for a 12-month period. The following specific aspects of the proposed activities are likely to result in the take of marine mammals: presence of survey personnel near pinniped haulout sites and unintentional approach of survey personnel towards hauled out pinnipeds. Take, by Level B harassment only, of individuals of California sea lions (*Zalophus californianus*), harbor seals (*Phoca vitulina richardii*), and northern elephant seals (*Mirounga angustirostris*) is anticipated to result from the specified activity.

Description of the Specified Activity

Overview

PISCO requested an IHA to continue rocky intertidal monitoring work that has been ongoing for 20 years. PISCO focuses on understanding the nearshore ecosystems of the U.S. west coast through a number of interdisciplinary collaborations. The program integrates long-term monitoring of ecological and oceanographic processes at dozens of sites with experimental work in the lab and field. A short description of project components is found below. A detailed description of the planned intertidal monitoring project was provided in the **Federal Register** notice for the proposed IHA (82 FR 3727; January 12, 2017). Since that time, no changes have been made to the planned monitoring activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the description of the specific activity.

Dates and Duration

PISCO's research is conducted throughout the year, but will begin no sooner than February 21, 2017 and end on February 20, 2018. Most sites are sampled one to two times per year over a 1-day period (4-6 hours per site) during a negative low tide series. Due to the large number of research sites, scheduling constraints, the necessity for negative low tides and favorable weather/ocean conditions, exact survey dates are variable and difficult to predict. Some sampling may occur in all months.

Specified Geographic Region

Sampling sites occur along the California and Oregon coasts. Community Structure Monitoring sites range from Ecola State Park near Cannon Beach, Oregon to Government Point located northwest of Santa Barbara, California. Biodiversity Survey sites extend from Ecola State Park south to Cabrillo National Monument in San Diego County, California. Exact locations of sampling sites can be found in Tables 1 and 2 of

PISCO's application which may be found on our Web site at *http://www.nmfs.noaa.gov/pr/permits/incidental/research.htm*.

Detailed Description of Activities

Community Structure Monitoring involves the use of permanent photoplot quadrats, which target specific algal and invertebrate assemblages (*e.g.* mussels, rockweeds, barnacles). Each photoplot is photographed and scored for percent cover. The Community Structure Monitoring approach is based largely on surveys that quantify the percent cover and distribution of algae and invertebrates that constitute these communities. This approach allows researchers to quantify both the patterns of abundance of targeted species, as well as characterize changes in the communities in which they reside. Such information provides managers with insight into the causes and consequences of changes in species abundance. There are 47 Community Structure sites, each of which is surveyed over a 1-day period during a low tide series one to two times a year.

Biodiversity Surveys are part of a long-term monitoring project and are conducted every 3-5 years across 140 established sites. Note that many, but not all, of the 47 Community Structure sites are also Biodiversity Survey sites. Thirty-eight of the Community Structure sites are utilized for Biodiversity Surveys, leaving nine sites that are only Biodiversity Survey locations. These Biodiversity Surveys involve point contact identification along permanent transects, mobile invertebrate quadrat counts, sea star band counts, and tidal height topographic measurements.

Sixteen Biodiversity Survey sites will be visited as part of this proposed IHA. Four of the Biodiversity Survey sites are also Community Structure sites, leaving 12 sites

that are only Biodiversity Survey sites. As such, a total of 59 sites will be visited under the proposed IHA.

The intertidal zones where PISCO conducts intertidal monitoring are also areas where pinnipeds can be found hauled out on the shore at or adjacent to some research sites. Pinnipeds are likely to be observed at 17 out of the 59 survey sites. Accessing portions of the intertidal habitat at these locations may cause incidental Level B (behavioral) harassment of pinnipeds through some unavoidable approaches if pinnipeds are hauled out directly in the study plots or while biologists walk from one location to another. No motorized equipment is involved in conducting these surveys.

Comments and Responses

A notice of NMFS' proposal to issue an IHA was published in the **Federal Register** on January 12, 2017 (82 FR 3727). During the 30-day public comment period, the Marine Mammal Commission (Commission) submitted a letter on January 18, 2017. The letter is available on the Internet at *www.nmfs.noaa.gov/pr/permits/incidental/research.htm.* The Commission had no formal comments and concurred with NMFS's preliminary finding that recommended that NMFS issue an IHA to PISCO, subject to the inclusion of the mitigation, monitoring, and reporting measures.

Description of Marine Mammals in the Area of the Specified Activity

Several pinniped species can be found along the California and Oregon coasts. The three that are most likely to occur at some of the research sites are California sea lion, harbor seal, and northern elephant seal. PISCO researchers have seen very small numbers (*i.e.*, five or fewer) of Steller sea lions at one of the sampling sites. However,

these sightings are extremely rare. Species that may be found around monitoring locations are shown in Table 1.

A detailed description of the of the species likely to be affected by the monitoring project, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHA (82 FR 3727; January 12, 2017). Since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to that **Federal Register** notice for these descriptions. Please also refer to NMFS' website (www.nmfs.noaa.gov/pr/species/mammals/) for generalized species accounts.

Table 1. Marine mammals potentially present in the vicinity of study areas.

Species	Scientific Name	Stock	ESA/MMPA status; Strategic (Y/N)[1]	Stock abundance (CV, N_{min}, most recent abundance survey)[2]
California sea lion	*Zalophus californianus*	U.S.	-; N	296,750 (n/a; 153,337; 2011)
Steller sea lion	*Eumetopias jubatus*	Eastern U.S.	D; Y	60,131- 74,448 (n/a; 36,551; 2013)
Harbor seal	*Phoca vitulina richardii*	California/ Oregon/Washington	-; N	30,968 (0.157; 27,348; 2012 [CA])/ 24,732 (n/a; n/a [OR/WA][3]
Northern elephant seal	*Mirounga angustirostris*	California breeding stock	-; N	179,000 (n/a; 81,368; 2010)

[1]ESA status: Endangered (E), Threatened (T) / MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA.
[2]CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable. For certain stocks of pinnipeds, abundance estimates are based upon observations of animals (often pups) ashore multiplied by some correction factor derived from knowledge of the specie's (or similar species') life history to arrive at a best abundance estimate; therefore, there is no associated CV. In these cases, the minimum abundance may represent actual counts of all animals ashore.
[3] The most recent abundance estimate is >8 years old, there is no current estimate of abundance available for this stock.

Potential Effects of the Specified Activity on Marine Mammals

The effect of stressors associated with the specified activity (*e.g.* pedestrian researchers) has the potential to result in behavioral harassment of marine mammals in the vicinity of the action areas. The **Federal Register** notice for the proposed IHA (82 FR 3727; January 12, 2017) included a discussion of the effects of such disturbance on marine mammals, therefore that information is not repeated here.

Anticipated Effects on Marine Mammal Habitat

NMFS described potential impacts to marine mammal habitat in detail in our **Federal Register** notice of proposed authorization (82 FR 3727; January 12, 2017). In summary, the project activities would not modify existing marine mammal habitat. Because of the short duration of the activities and the relatively small area of the habitat that may be affected, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences for individual marine mammals or their populations

Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must, where applicable, set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (where relevant).

Mitigation Measures

PISCO will implement several mitigation measures to reduce potential take by Level B (behavioral disturbance) harassment. Measures include the following:

- When possible, researchers will observe a site from a distance with binoculars to detect any marine mammals prior to approaching the site. Researchers will approach a site with caution (slowly and quietly) to avoid surprising any hauled-out individuals and to reduce stampeding of individuals towards the water.
- If possible, researchers will avoid pinnipeds along access ways to sites by locating and taking a different access way. Researchers will keep a safe distance from and not approach any marine mammal while conducting research, unless it is absolutely necessary to flush a marine mammal in order to continue conducting research (*i.e.* if a site cannot be accessed or sampled due to the presence of pinnipeds).
- Researchers will avoid making loud noises (*i.e.*, using hushed voices) and keep bodies low to the ground in the visual presence of pinnipeds.
- Researches will monitor the offshore area for predators (such as killer whales and white sharks) and avoid flushing of pinnipeds when predators are observed in nearshore waters. Note that PISCO has never observed an offshore predator while researchers were present at any of the survey sites.
- Intentional flushing will be avoided if pups are present and nursing pups will not be disturbed.
- To avoid take of Steller sea lions, any site where they are present will not be approached and will be sampled at a later date. Note that observation of sea lions at survey sites is extremely rare.

- Researchers will promptly vacate sites at the conclusion of sampling.

The methodologies and actions noted in this section will be included as mitigation measures in the IHA to ensure that impacts to marine mammals are mitigated to the lowest level practicable. The primary method of mitigating the risk of disturbance to pinnipeds, which will be in use at all times, is the selection of judicious routes of approach to study sites, avoiding close contact with pinnipeds hauled out on shore, and the use of extreme caution upon approach. Each visit to a given study site will last for approximately 4-6 hours, after which the site is vacated and can be re-occupied by any marine mammals that may have been disturbed by the presence of researchers. By arriving before low tide, worker presence will tend to encourage pinnipeds to move to other areas for the day before they haul out and settle onto rocks at low tide.

Mitigation Conclusions

NMFS has carefully reviewed mitigation measures to ensure these measures would have the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation.

Any mitigation measure(s) prescribed by NMFS should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to

the accomplishment of one or more of the general goals listed below:

1. Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).

2. A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).

3. A reduction in the number of times (total number or number at biologically important time or location) individuals would be exposed to activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).

4. A reduction in the intensity of exposures (either total number or number at biologically important time or location) to activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing the severity of harassment takes only).

5. Avoidance or minimization of adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.

6. For monitoring directly related to mitigation – an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on our evaluation of the applicant's proposed measures, NMFS has

determined that the mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must, where applicable, set forth "requirements pertaining to the monitoring and reporting of such taking." The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. PISCO has described their long-standing monitoring actions in Section 13 of the Application.

Monitoring measures prescribed by NMFS should accomplish one or more of the following general goals:

1. An increase in our understanding of the likely occurrence of marine mammal species in the vicinity of the action, *i.e.*, presence, abundance, distribution, and/or density of species.

2. An increase in our understanding of how many marine mammals are likely to be exposed to levels of disturbance that we associate with specific adverse effects, such as behavioral harassment;

3. An increase in our understanding of how marine mammals respond to stimuli expected to result in take and how anticipated adverse effects on individuals (in different ways and to varying degrees) may impact the population, species, or stock (specifically

through effects on annual rates of recruitment or survival) through any of the following methods:

- Behavioral observations in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict received level, distance from source, and other pertinent information);
- Physiological measurements in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict received level, distance from source, and other pertinent information);
- Distribution and/or abundance comparisons in times or areas with concentrated stimuli versus times or areas without stimuli;

4. An increased knowledge of the affected species; and

5. An increase in our understanding of the effectiveness of certain mitigation and monitoring measures.

PISCO will contribute to the knowledge of pinnipeds in California and Oregon by noting observations of: (1) unusual behaviors, numbers, or distributions of pinnipeds, such that any potential follow-up research can be conducted by the appropriate personnel; (2) tag-bearing carcasses of pinnipeds, allowing transmittal of the information to appropriate agencies and personnel; and (3) rare or unusual species of marine mammals for agency follow-up.

Monitoring requirements in relation to PISCO's rocky intertidal monitoring will include observations made by the applicant. Information recorded will include species

counts (with numbers of pups/juveniles when possible) of animals present before approaching, numbers of observed disturbances, and descriptions of the disturbance behaviors during the monitoring surveys, including location, date, and time of the event. For consistency, any reactions by pinnipeds to researchers will be recorded according to a three-point scale shown in Table 2. Note that only observations of disturbance Levels 2 and 3 should be recorded as takes.

Table 2. Levels of Pinniped Behavioral Disturbance.

Level	Type of response	Definition
1	Alert	Seal head orientation or brief movement in response to disturbance, which may include turning head towards the disturbance, craning head and neck while holding the body rigid in a u-shaped position, changing from a lying to a sitting position, or brief movement of less than twice the animal's body length.
2	Movement	Movements in response to the source of disturbance, ranging from short withdrawals at least twice the animal's body length to longer retreats over the beach, or if already moving a change of direction of greater than 90 degrees.
3	Flush	All retreats (flushes) to the water.

In addition, observations regarding the number and species of any marine mammals observed, either in the water or hauled-out, at or adjacent to a site, are recorded as part of field observations during research activities. Information regarding physical and biological conditions pertaining to a site, as well as the date and time that research was conducted are also noted. This information will be incorporated into a monitoring report for NMFS. PISCO will also report observations of unusual behaviors, numbers, or distributions of pinnipeds, or of tag-bearing carcasses, to NMFS Southwest Fisheries Science Center (SWFSC).

If at any time the specified activity clearly causes the take of a marine mammal in a manner prohibited by this IHA, such as an injury (Level A harassment), serious injury,

or mortality, PISCO shall immediately cease the specified activities and report the incident to the Office of Protected Resources, NMFS, and the Southwest Regional Stranding Coordinator, NMFS. The report must include the following information:

(1) Time and date of the incident;

(2) Description of the incident;

(3) Environmental conditions (*e.g.*, wind speed and direction, Beaufort sea state, cloud cover, and visibility);

(4) Description of all marine mammal observations in the 24 hours preceding the incident;

(5) Species identification or description of the animal(s) involved;

(6) Fate of the animal(s); and

(7) Photographs or video footage of the animal(s).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with PISCO to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. PISCO may not resume the activities until notified by NMFS.

In the event that an injured or dead marine mammal is discovered and it is determined that the cause of the injury or death is unknown and the death is relatively recent (*e.g.*, in less than a moderate state of decomposition), PISCO shall immediately report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator, NMFS. The report must include the same information identified in the paragraph above IHA. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with PISCO to determine whether

additional mitigation measures or modifications to the activities are appropriate.

In the event that an injured or dead marine mammal is discovered and it is determined that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.*, previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), PISCO shall report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator, NMFS, within 24 hours of the discovery. PISCO shall provide photographs or video footage or other documentation of the stranded animal sighting to NMFS. Activities may continue while NMFS reviews the circumstances of the incident.

A draft final report must be submitted to NMFS Office of Protected Resources within 60 days after the conclusion of the 2016-2017 field season or 60 days prior to the start of the next field season if a new IHA will be requested. The report will include a summary of the information gathered pursuant to the monitoring requirements set forth in the IHA. A final report must be submitted to the Director of the NMFS Office of Protected Resources and to the NMFS West Coast Regional Administrator within 30 days after receiving comments from NMFS on the draft final report. If no comments are received from NMFS, the draft final report will be considered to be the final report.

Monitoring Results from Previously Authorized Activities

PISCO complied with the mitigation and monitoring that were required under the IHA issued in December 2014. In compliance with the IHA, PISCO submitted a report detailing the activities and marine mammal monitoring they conducted. The IHA required PISCO to conduct counts of pinnipeds present at study sites prior to approaching the sites and to record species counts and any observed reactions to the presence of the

researchers.

From December 17, 2014, through December 16, 2015, PISCO researchers conducted rocky intertidal sampling at numerous sites in California and Oregon (see Table 1 and 2 in PISCO's 2014-2015 monitoring report). During this time no injured, stranded, or dead pinnipeds were observed. Tables 7, 8, and 9 in PISCO's monitoring report outline marine mammal observations and reactions. During this period there were 44 takes of harbor seals, 19 takes of California sea lions, and 4 takes of northern elephant seals. NMFS had authorized the take of 183 harbor seals, 60 California sea lions, and 30 Northern Elephant seals under the IHA.

Based on the results from the monitoring report, we conclude that these results support our original findings that the mitigation measures set forth in the 2014-2015 IHA effected the least practicable impact on the species or stocks. There were no stampede events this year and most disturbances were Level 1 and 2 from the disturbance scale (Table 2) - meaning the animal did not fully flush but observed or moved slightly in response to researchers. Those that did fully flush to the water did so slowly. Most of these animals tended to observe researchers from the water and then re-haulout farther upcoast or downcoast of the site within approximately 30 minutes of the disturbance.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration,

breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

All anticipated takes would be by Level B harassment, involving temporary changes in behavior. The mitigation and monitoring measures are expected to minimize the possibility of injurious or lethal takes such that take by injury, serious injury, or mortality is considered remote. Animals hauled out close to the actual survey sites may be disturbed by the presence of researchers and may alter their behavior or attempt to move away from the researchers.

As discussed earlier, NMFS considers an animal to have been harassed if it moved greater than two times its body length in response to the researcher's presence or if the animal was already moving and changed direction and/or speed, or if the animal flushed into the water. Animals that became alert without such movements were not considered harassed.

For the purpose of the issued IHA, only the Oregon and California sites that are frequently sampled and have a marine mammal presence during sampling were included in calculating take estimates. Sites where only Biodiversity Surveys are conducted did not provide enough data to confidently estimate takes since they are sampled infrequently (once every 3-5 years). A small number of harbor seal, northern elephant seal and California sea lion pup takes are anticipated as pups may be present at several sites during spring and summer sampling.

Take estimates are based on marine mammal observations from each site. Marine mammals are observed as part of PISCO site observations, which include taking notes on physical and biological conditions at the site. The maximum number of marine mammals, by species, seen at any given time throughout the sampling day is recorded at

the conclusion of sampling. A marine mammal is counted if it is seen on access ways to the site, at the site, or immediately up-coast or down-coast of the site. Marine mammals in the water immediately offshore are also recorded. Any other relevant information, including the location of a marine mammal relevant to the site, any unusual behavior, and the presence of pups is also noted.

These observations formed the basis from which researchers with extensive knowledge and experience at each site estimated the actual number of marine mammals that may be subject to take. Take estimates for each species for which take would be authorized were based on the following equation:

Take estimate per survey site = (number of expected animals per survey site * number of survey days per survey site)

Individual species' totals for each survey site were summed to arrive at a total estimated take. In most cases the number of takes is based on the maximum number of marine mammals that have been observed at a site throughout the history of the site (1-3 observation per year for 5-10 years or more) with additional input provided by the researchers with site-specific knowledge and experience. Section 6 in PISCO's application outlines the number of visits per year for each sampling site and the potential number of pinnipeds anticipated to be encountered at each site. Tables 3, 4, 5 in PISCO's application outlines the number of potential takes per site (see **ADDRESSES**).

Harbor seals are expected to occur at 16 locations in numbers ranging from 5 to 30 per visit (Table 3 in PISCO's application). It is anticipated that there will be 220 takes of adult harbor seals and 13 takes of weaned pups. Therefore, NMFS authorizes the take of up to 233 harbor seals.

California sea lions are expected to be present at five sites. Eighty-five adult and five pups are expected to be taken. Therefore, NMFS authorizes the take of 90 California sea lions.

Northern elephant seals are only expected to occur at one site this year, Piedras Blancs, which will experience two separate visits. Up to 20 adult and 40 pup takes are anticipated. Therefore, NMFS authorizes the take of up to 60 northern elephant seals.

PISCO researchers report that they have very rarely observed Steller sea lions at any research sites and none have been observed over the last several years. Therefore, PISCO has not requested, and NMFS did not authorize take of any Steller sea lions.

NMFS has authorized the take, by Level B harassment only, of 233 harbor seals, 90 California sea lions, and 60 northern elephant seals. These numbers are considered to be maximum take estimates. Therefore, actual take may be less if animals decide to haul out at a different location for the day or animals are out foraging at the time of the survey activities.

Analysis and Determinations

Negligible Impact Analysis

Negligible impact is "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival" (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of Level B harassment takes, alone, is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals

that might be "taken" through behavioral harassment, NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, feeding, migration, etc.), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, effects on habitat, and the status of the species.

To avoid repetition, the discussion of our analyses applies generally to the three species for which take is authorized, given that the anticipated effects of these surveys on marine mammals are expected to be relatively similar in nature. Where there are species-specific factors that have been considered, they are identified below.

No injuries or mortalities are anticipated to occur as a result of PISCO's rocky intertidal monitoring surveys and none are proposed to be authorized. The risk of marine mammal injury, serious injury, or mortality associated with rocky intertidal monitoring increases somewhat if disturbances occur during breeding season. These situations present increased potential for mothers and dependent pups to become separated and, if separated pairs do not quickly reunite, the risk of mortality to pups (*e.g.*, through starvation) may increase. Separately, adult male elephant seals may trample elephant seal pups if disturbed, which could potentially result in the injury, serious injury, or mortality of the pups. The risk of either of these situations is greater in the event of a stampede; however, as described previously, stampede is not considered likely to occur.

Very few pups are anticipated to be encountered during the proposed monitoring surveys. However, a small number of harbor seal, northern elephant seal, and California sea lion pups have been observed at several of the proposed monitoring sites during past years. Harbor seals are very precocious with only a short period of time in which

separation of a mother from a pup could occur. Although elephant seal pups are occasionally present when researchers visit survey sites, risk of pup mortalities is very low because elephant seals are far less reactive to researcher presence compared to the other two species. Further, elephant seal pups are typically found on sand beaches, while study sites are located in the rocky intertidal zone, meaning that there is typically a buffer between researchers and pups. Finally, the caution used by researchers in approaching sites generally precludes the possibility of behavior, such as stampeding, that could result in extended separation of mothers and dependent pups or trampling of pups. No research would occur where separation of mother and her nursing pup or crushing of pups can become a concern.

Typically, even those reactions constituting Level B harassment would result at most in temporary, short-term disturbance. In any given study season, researchers will visit sites one to two times per year for a total of 4-6 hours per visit. Therefore, disturbance of pinnipeds resulting from the presence of researchers lasts only for short periods of time and is separated by significant amounts of time in which no disturbance occurs.

Some of the pinniped species may use some of the sites during certain times of year to conduct pupping and/or breeding. However, some of these species prefer to use offshore islands for these activities. At the sites where pups may be present, PISCO has proposed to implement certain mitigation measures, such as no intentional flushing if dependent pups are present, which will avoid mother/pup separation and trampling of pups.

Of the marine mammal species anticipated to occur in the proposed activity areas,

none are listed under the ESA. Taking into account the planned mitigation measures, effects to marine mammals are generally expected to be restricted to short-term changes in behavior or temporary abandonment of haulout sites, pinnipeds are not expected to permanently abandon any area that is surveyed by researchers, as is evidenced by continued presence of pinnipeds at the sites during annual monitoring counts. Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed mitigation and monitoring measures, NMFS finds that the total marine mammal take from PISCO's rocky intertidal monitoring program will not adversely affect annual rates of recruitment or survival and, therefore, will have a negligible impact on the affected species or stocks.

Small Numbers

Table 3 presents the abundance of each species or stock, the proposed take estimates, and the percentage of the affected populations or stocks that may be taken by Level B harassment. The numbers of animals authorized to be taken would be considered small relative to the relevant stocks or populations (0.75 – 0.94 percent for harbor seals, and <0.01 percent for California sea lions and northern elephant seals). Because these are maximum estimates, actual take numbers are likely to be lower, as some animals may not be present on survey days.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, we find that small numbers of marine mammals will be taken relative to the populations of the affected species or

stocks.

Table 3. Population abundance estimates, total proposed Level B take, and percentage of population that may be taken for the potentially affected species during the proposed rocky intertidal monitoring program.

Species	Abundance*	Total Proposed Level B Take	Percentage of Stock or Population
Harbor seal	30,968[1] 24,732[2]	233	<0.75 – 0.94
California sea lion	296,750	90	<0.01
Northern elephant seal	179,000	60	<0.01

*Abundance estimates are taken from the 2015 U.S. Pacific Marine Mammal Stock Assessments (Carretta *et al.*, 2016).
[1] California stock abundance estimate;
[2] Oregon/Washington stock abundance estimate from 1999-Most recent surveys

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

No species listed under the ESA are expected to be affected by these activities. Therefore, NMFS has determined that a section 7 consultation under the ESA is not required.

National Environmental Policy Act (NEPA)

In 2012, NMFS prepared an EA analyzing the potential effects to the human environment from conducting rocky intertidal surveys along the California and Oregon coasts and issued a Finding of No Significant Impact (FONSI) on November 26, 2012 on the issuance of an IHA for PISCO's rocky intertidal surveys in accordance with section 6.01 of the NOAA Administrative Order 216-6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999). We have

reviewed the application for a renewed IHA for ongoing monitoring activities for 2017-18 as well as results from the 2014-15 monitoring report. Based on that review, we have determined that the action is very similar to that considered in the previous IHA. We conducted an environmental review and found no significant new circumstances or information relevant to environmental concerns have been identified. Thus, we have determined that the preparation of a new or supplemental NEPA document is not necessary. The 2012 NEPA documents are available for review at *www.nmfs.noaa.gov/pr/permits/incidental/research.htm.*

Authorization

As a result of these determinations, we have issued an IHA to PISCO for conducting the described activities related to rocky intertidal monitoring surveys along the Oregon and Washington coasts from February 21, 2017 through February 20, 2018 provided the previously described mitigation, monitoring, and reporting requirements are incorporated.

Dated: February 28, 2017.

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Donna S. Wieting

Director, Office of Protected Resources,

National Marine Fisheries Service.

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